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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,927	10/13/2004	Eugene A Pankake	GPNG.P-002	5926
57380	7590	12/29/2006	EXAMINER	
OPPEDAHL & OLSON LLP P.O. BOX 4850 FRISCO, CO 80443-4850			LAMB, BRENDA A	
		ART UNIT	PAPER NUMBER	
		1734		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	12/29/2006		PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,927	PANKAKE, EUGENE A	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brenda A. Lamb	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 August 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-31 and 43-47 is/are pending in the application.
  - 4a) Of the above claim(s) 1-12 and 32-42 is/are withdrawn from consideration.
- 5) Claim(s) 13-22 and 27-30 is/are allowed.
- 6) Claim(s) 23-25, 31, 43 and 47 is/are rejected.
- 7) Claim(s) 26 and 44-46 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/04/2005</u> .   | 6) <input type="checkbox"/> Other: _____ .                        |

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Applicant's election without traverse of Group II in the reply filed on 8/24/2006 is acknowledged.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 31 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,4 and 8 of U.S. Patent No. 6,837,932 (Pankake) in view of Slobodkin 5,674,319.

Pankake '932 claims teaches the design of an apparatus comprising: an elongated nozzle having an elongated opening defined along its length by a flexible back seal and a metering surface defined with respect to an upward direction of travel of a substrate or roll past the elongated opening, the substrate or roll having a width, the direction of travel such that the substrate or roll first encounters the flexible back seal and later encounters the metering surface, the elongated opening having first and second ends separated by a distance, the distance less than the width of the substrate

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or roll; the nozzle defining a back direction away from the substrate or roll and a front direction toward the substrate or roll; a first end seal at the first end; a second end seal at the second end; the first seal comprising a first lip or edge extending in the direction of travel and having an edge in the direction of the substrate or roll; the second seal comprising a first lip or edge extending in the direction of travel and having an edge in the direction of the substrate or roll; the edges of the first lips or edges of the first and second seals shaped to fit the substrate or roll; and the first end seal mounted to the nozzle by means of a flexible bracket; the second end seal mounted to the nozzle by means of a flexible bracket. Pankake '932 fails to claim that the nozzle is rotatable about an axis parallel to the elongated opening, the apparatus comprising means by which the nozzle may be fixed at any of a plurality of respective angles of rotation about the first axis. However, it would have been obvious to support the Pankake '932 nozzle such that it nozzle is rotatable about axis that is parallel to the elongated opening and includes means to fix the nozzle such as taught by Slobodkin for the taught advantage of enabling one to change to different dies for dispersing different materials on webs having different widths.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26,31 and 45 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "the slot angle" at line 2 of claim 26 lacks proper antecedent basis. The term "the return funnels" in claim 45 lacks proper antecedent basis. The term "the first axis" in claim 31 lacks proper antecedent basis.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a flexible bracket wherein the first and second end seal are each mounted to the nozzle by way of the flexible bracket; and first and third lips of each of the first and second seals is joined together at the top ends.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flexible bracket which enables the mounting the first and second end seal to the nozzle must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-25 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Alheid 4,405,661.

Alheid teaches the design of a coating apparatus which is comprised of an elongated nozzle consisting of a leading edge (tip edge end of metering element 64), a metering surface 21 and end seals 107 which in combination define an elongated opening that deposits coating to an application surface; baffle plate 100 in combination with plate 103 and lower portion of metering element 64 as shown in Figure 4 define a return trough or channel for the active nozzle to temporarily collect undeposited coating back for recycling; a return funnel 99 for collecting undeposited coating from the return trough for returns to the coating tank 51 for recycling. Thus claim Alheid teaches every

element of the claimed apparatus set forth in claim 43. With respect to claim 23, Alheid teaches the apparatus is comprised of a first nozzle and a return funnel 99, the apparatus positioning the first nozzle and the return funnel relative to an applicator roll or web, the first nozzle comprising an slot elongated along a first axis, the slot defined by a flexible back seal 21 elongated along the first axis and by a metering surface 64 elongated along the first axis, the back seal and metering surface defining a first plane parallel with the first axis; the slot disposed in osculation with the applicator roll or web along a line; the apparatus comprising means by which the first nozzle may be fixed at any of a plurality of orientations so that the first plane is at any of a plurality of respective angles of rotation about the first axis (as shown in Figures 1 and 3). With respect to claims 24-25, Alheid teaches the plurality of orientations comprise a continuously adjustable range of orientations and includes that within the scope of claim 25 by way of means which include a servo-motor means 24.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Naka et al 5,136,972 in view of Willnow et al.

Naka et al teaches an apparatus comprised of an elongated nozzle consisting of a leading edge and a metering surface, the elongated nozzle having an elongated opening that deposits coating to an application surface; a cleaning shell or hollow object for closing onto and cleaning an off-line nozzle; a locking system that includes support 24 that repeatably and accurately maintains desired orientation to the off-line nozzle. Naka et al fails to teach the elongated nozzle includes end seals. However, it would have been obvious to provide the Naka et al elongated nozzle or die with end seals

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since the use of end seals to confine the contents of an extrusion die such as taught by Willnow et al (elements 30,32)

Claims 13-22 and 27-30 are allowed.

Claims 26 and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Brenda A. Lamb at telephone number (571) 272-1231.

*Brenda A. Lamb*  
Brenda A Lamb  
Examiner  
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